IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 330 of 2004

In

Execution Appln No.192 of 1990

Nargis Abid Upletawala and Ors..Applicants

V/s

Bombay Mercantile Co Op
Bank Ltd. and Anr. ..Respondents

Mr P.R.Naik for Respondent no.1
Mr.K.J.Somne for Applicnts
Mr.T.Toradia for Opponents nos.3 and 4
Mr.A.M.Kazi,dy.Sheriff present in Court.

CORAM:S.U.KAMDAR,J.
DATED: 13th January 2006

P.C.:-

. By consent of the parties order dated 8-2-2005

is recalled as erroneously incorrect order was unloaded. The said order is therefore, substituted by the following corrected order.

1. The present Chamber Summons is taken out for an order for setting aside the sale of flat bearing No.84, 8th floor, Sarnath Building, 56B Bhulabhai Desai Road, Mumbai 400 026. It is also prayed that the amount received in respect of the sale of the flat which is being appropriated towards the decretal sum be reversed and the said attachment be set aside. By prayer (b) of the Chamber Summons it has been inter alia prayed that letter dated 3-8-2003 whereunder the Respondent bank has agreed to accept a sum of Rs.1,20,00,000/- in full and final settlement of their claim against the applicant with further interest at the rate of 13.5% p.a. till payment or realisation be recorded as concluding and binding agreement arrived at between the parties.

2. The additional argument is advanced by the learned Counsel for the applicants that in view of the judgment of the full bench in the case of Narendra Kantilal Shah and another v/s Joint Registrar, Co-operative Societies and others reported in **2004(4) Bom.C.R.707** inter alia holding that in view of the provisions of Section 17 of the Recovery of Debts Due to Banks and

Financial Institutions Act, 1993, the Co operative Court has no jurisdiction to entertain the present proceedings and therefore the award decree passed by the Co-Op Court is without jurisdiction, and therefore the said decree is unexecutable. Another contention raised is that in view of the provisions of section 74 of Multi State Co operative Societies Act, 2002, the appropriate forum to agitate the dispute is Central Registrar of Co Operative Society and the Co Operative Court under Section 91 had no jurisdiction therefore also the decree passed by the Co operative Court is without jurisdiction and nullity and same is liable to be set aside.

3. The Arbitration proceedings were filed by the Respondent no.1 bank under Section 91 of the Maharashtra Co operative Societies Act, 1960 for recovery of amount of loan lent and advanced to the original defendant viz. M/s Hindustan Steel Syndicate and others as well as the applicant herein who were partners of the said firm. According to the learned Counsel for Respondent bank decree holder, there is an outstanding amount of over sum of Rs.12 crores with interest accumulated on the original principal amount. According to the learned Counsel for the Respondent the agreement reflected in the letter dated 3-4-2003 is not valid and binding because

admittedly the applicants have committed defaults in making payment as contemplated therein hence under clause 3 the concessions granted will automatically stands withdrawn.

4. The Sheriff of Bombay has also filed a report dated 21-2-2004 inter alia for confirmation of sale of the flat in favour of highest bidder i.e. disputant bank itself. The Bank has participated in the said auction and has given the offer for sum of Rs.2.50 crores. The said amount of Rs.2.5 crores is to be adjusted with the decretal amount.

5. In so far as legal issues raised by the applicant are concerned, I do not find any merit therein. As regards full bench judgment of this Court is concerned by an order dated 16-1-2004 the Hon'ble Supreme Court has in SLP (Civil) No.886 of 2004, stayed the judgment itself. As the said judgment has been stayed by the order of the Hon'ble Supreme Court it is not permissible for me to look into the said judgment and or give effect to the same. In view thereof the aforesaid contention is required to be rejected.

6. In so far as the contention regarding application of provisions of Section 74, pertaining to the jurisdiction of Central

Registrar is concerned. I am informed by the applicants that provisions of Section 74(1) were not in force as on filing of the said proceedings, in 1989 and the Co operative Court had jurisdiction to entertain the present application. In view thereof the contention that the said award decree is nullity or without jurisdiction has no merits and therefore the said submissions are rejected.

7. Now turning to the question of settlement as reflected in letter dated 3-4-2003 I am of the opinion that by virtue of clause 3 of the said letter agreement, the said settlement cannot be recorded. It is an admitted position before me that the applicant shave committed default of offer of bank which is reflected in the letter dated 3-4-2003 and it was clearly understood therein that if the applicant commits default then all concessions will be withdrawn. It is further admitted position before me that pursuant to the said arrangement dated 3-4-2003 the applicants herein have not paid any amount whatsoever towards instalment as stipulated therein. In view of the said admitted position I do not find any substance in the contention of the learned Counsel for the applicant that said settlement should be recorded and the decretal amount should be restricted to the amount as

reflected in the said settlement. In view of the aforesaid position in law, Chamber Summons is dismissed with no order as to costs.

8. In so far as the Report of the Sheriff of Bombay is concerned, offer of the disputant bank is the highest one which has been received by the offerers. I am informed that earlier number of times the sale was advertised by public auction but there were no offers hence the offer given by the disputant bank being the highest one the same is accepted. Hence the Sheriff's report is made absolute in terms of prayer clauses (a) to (f).

9. The learned Counsel for the applicants seeks stay of the order. Stay granted till 25-2-2005.

(S.U.KAMDAR,J.)